

The New Economy and its Implications for Legal Services: A High Tech Perspective

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I. INTRODUCTION

Reading Professor Hadfield's conclusions about the issues general counsel face in today's legal industry, one has the sense—from where I sit—that many of the comments attributed to these attorneys could have come from any one of the general counsels in the Silicon Valley. The observations are very much on-point from the client perspective. Professor Hadfield's article delves into some of the challenges high-tech clients face in obtaining effective legal counsel in what she describes as the "new economy." The problem solving and client service approaches used by today's legal profession developed in what Professor Hadfield terms the "old economy," an economy characterized by "large managerial enterprises engaged in mass production on a national level."¹ In contrast, the new economy is characterized by international, dynamic, and specialized markets. In the new economy, the rapid development of economic relationships, even further accelerated by globalization and technology, has outpaced the development of the legal infrastructure, rendering traditional legal approaches to client service and problem solving inefficient and ineffectual.

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¹ Gillian K. Hadfield, *Legal Infrastructure and the New Economy*, 8 ISJP 12 (2012) (citing ALFRED D. CHANDLER JR., *THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS* 486 (1977)).

Professor Hadfield suggests that there are two primary reasons why the legal infrastructure is not developing to meet clients' needs. First, she posits that public actors have a "near-complete monopoly over rule production" and that lawyers' self-regulation of their profession leads to a closed legal market.² Professor Hadfield also suggests that the legal education system restricts the ability of the legal profession to change because the legal education system itself has remained stagnant and "cloistered," even in the face of great market change.³

To remedy the lagging legal infrastructure, Professor Hadfield recommends removing the obstacles inhibiting access to the legal system. She argues that the ways in which the legal profession is isolated from other specialties weakens the ability of the legal practice to respond to the needs of a dynamic "new economy" client with multifaceted needs. In order to solve these multidisciplinary issues facing today's high-tech clients, Professor Hadfield envisions creating teams of lawyers and non-lawyers. As she explains, due to the restrictions on the unauthorized practice of the law, this kind of hybrid problem-solving team is not allowed. If these kinds of educational and legal restrictions were lifted, Professor Hadfield argues, new formations of expert teams would develop leading to more innovative, efficient and cost-effective legal problem solving.

While in general I agree with the good professor, in looking at the other distinguished authors' comments on Professor Hadfield's piece, it may be best to focus my comments on the reaction to these ideas from a client perspective. I focus my comments on two areas of Professor Hadfield's article: a client's perspective on existing in the "new economy" as the characteristics of this "new economy" are described by Professor Hadfield and the approaches required to service clients in the new economy. First, I posit a framework for how to think about the "new economy" which Professor Hadfield describes. Second, I focus on the expansion of skill sets that, from the client vantage point, this new economy necessitates.

Professor Hadfield's new economy largely emerges from the extension of world markets into what were previously closed economies, such as the Soviet bloc, China and some other Asian countries, as well as the changes that have inured from the expansion of the internet. She characterizes this new economy as a network

² *Id.* at 50.

³ *Id.* at 45.

whereby boundaries are “increasingly indistinct”⁴ and “the production, exchange and control of information” is a good in and of itself.⁵

Professor Hadfield’s description of the new economy resonates with the way that we, at my company, Synopsys, view the world. But, given the tech-savvy audience that reads this publication, I would perhaps go a little further to explain the new economy in the framework in which we at Synopsys experience it. In fact, the companies Professor Hadfield has studied are some of Synopsys’ customers. They are leaders in this new economy. An understanding of how Synopsys sees this framework may be pertinent since Synopsys essentially lives at the start of what Hadfield describes as the new economy.

At Synopsys, as “a world leader in software and IP used in the design, verification and manufacture of electronic components and systems,”⁶ or the electronic design automation market, we enable the development of chips used in everything from government supercomputers and computing cloud networks to wireless mobile platforms and individual hearing aids. We are also one of the leaders in what is called the “Intellectual Property space,” meaning pieces of pre-designed chips, and we operate in the Systems area. These segments serve the over \$300 billion semiconductor market, which is at the heart of the electronics industry. For us and for our customers, the framework in which we view and approach the new economy is threefold: “Mobile Everywhere, Cloud Anywhere, and Smart Everything.”

II. MOBILE EVERYWHERE

Mobile Everywhere means a whole new way of communicating. Video, texting, and social media are all essential features of mobile handsets and tablet devices. While Apple products once seemed largely limited to schools and graphic designers, the iPad is now becoming commonplace in corporate boardrooms. These changes in

⁴ *Id.* at 15.

⁵ *Id.* at 16.

⁶ Press Release, Marketwatch, Widen Enterprises Caps off Milestone Year with 12 New Digital Asset Management Customers in Q4 2011 (Jan. 24, 2012), *available at* <http://www.marketwatch.com/story/widen-enterprises-caps-off-milestone-year-with-12-new-digital-asset-management-customers-in-q4-2011-2012-01-24>.

the way that people receive information and communicate are also impacting the way that we deliver legal services internally and the way in which we treat these legal communications. Increasingly, legal memos on specific issues are giving way to bulleted summaries of the issues capable of being read on a Blackberry or iPhone. Instead of traveling to board meetings with thick binders of materials, directors often save all the materials to their iPads using apps such as Diligent Boardbooks. In-house lawyers and business executives are increasingly using mobile devices and apps such as Dropbox, Pages, and Goodreader to access, mark up, sign, and send documents on the go.

III. CLOUD ANYWHERE

Cloud Anywhere is also crucial to this new economy in that we are seeing the use of increasingly large amounts of data and data bandwidth. The cloud impacts everything from the connectivity between different products, to the enormous server sites that are being built to support this connectivity. The price and speed advantages of working in the cloud are vast; access to files and increased interconnectedness of geographically distanced people further increases the speed of already accelerated transactions in the new economy. Plans call for tens of thousands to hundreds of thousands of computers linked together to support this computational connectivity. Think about the fact that almost 30% of available bandwidth is used just by Netflix in peak periods.⁷ Skype and Cisco's ePresence have become standards of video and audio communication within many companies; these are enormous consumers of data and data bandwidth. It is estimated that an exabyte (that's 1,000,000,000,000,000,000 bytes) of traffic is surging through the system and predictions indicate that rates of traffic will explode to global mobile traffic of nearly 1,000 exabytes by 2015.⁸ Software as a Service (SaaS) and all of its hybrid forms call for completely new

⁷ *Global Internet Phenomena Spotlight: Netflix Rising*, SANDVINE INTELLIGENT BROADBAND NETWORKS (May 18, 2011), http://www.sandvine.com/downloads/documents/05-17-2011_phenomena/Sandvine%20Global%20Internet%20Phenomena%20Spotlight%20-%20Netflix%20Rising.pdf.

⁸ *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016*, CISCO SYSTEMS (Feb. 1, 2011), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html.

licensing schemas and revenue recognition considerations with customers. Indemnification provisions and data security considerations with dedicated cloud providers and server farms are concomitant issues. Internally, companies must deal with the document retention, privacy and data security implications, and confidentiality obligations stressed by these potential arrangements. These are just a few of the legal impacts the cloud has on our way of doing business.

IV. SMART EVERYTHING

Smart Everything is the third leg of the stool for Synopsys in the new economy. In 1965, Gordon E. Moore, a co-founder of Intel, noted the trend that the number of transistors that can be placed on a chip doubles roughly every two years.⁹ As the density of transistors on these integrated circuits increases, so too do the capabilities, such as processing speeds and memory available, of digital electronics increase.¹⁰ Driven by advances in Moore's Law,¹¹ we are now working with customers on tape-outs of twenty-two nanometers and below. Fifty thousand nanometers is about the diameter of the cross-section of a strand of human hair.¹² In the range of five to six nanometers, you are pushing atoms around.¹³ The next wave of sensors and actuators essentially will add elements to the Internet that are not necessarily human driven. Most of the chips that support this are now multi-core, meaning that they are really substantial systems on a piece of silicon.

⁹ Gordon E. Moore, *Cramming More Components onto Integrated Circuits*, 38 ELECTRONICS 8, (1965), available at [ftp://download.intel.com/museum/Moores_Law/Articles-Press_Releases/Gordon_Moore_1965_Article.pdf](http://download.intel.com/museum/Moores_Law/Articles-Press_Releases/Gordon_Moore_1965_Article.pdf).

¹⁰ Synopsys Investor & Analyst Meeting, held by Synopsys, Inc. (Sept. 28, 2011) (PowerPoint Presentation, Slide 41), available at <http://www.synopsys.com/company/investorrelations/documents/investorday2011.pdf>.

¹¹ See Moore's Law, INTEL (2005), [ftp://download.intel.com/museum/Moores_Law/Printed_Materials/Moores_Law_2pg.pdf](http://download.intel.com/museum/Moores_Law/Printed_Materials/Moores_Law_2pg.pdf).

¹² DICTIONARY OF NANOTECHNOLOGY, <http://www.nanodic.com/General/Nanometer.htm> (last visited Feb. 17, 2012).

¹³ *Id.*

This "Internet of Things"¹⁴ will mean that your toaster, your dog, your car, your house, and so on will communicate amongst themselves, or with an even larger infrastructure. Just taking the example of your car today, it is now powered by some 100 million lines of software code. The implications for products liability and intellectual property protection must be considered when you have that level of intellectual property present in a system. Privacy increasingly becomes a concern as more and more information about users existing and interacting within the world of an Internet of Things, such as how one likes his toast or where and how fast he drove to work, is potentially available.

Finally, add to this Internet of Things the increasingly global nature of today's economy, the fact that multiple jurisdictions seem to be increasing their regulatory schemas in a multitude of areas,¹⁵ and that all of these increasingly complex business transactions in the new economy are done with an emphasis on better, faster, and cheaper; you have an economic and technological reality that can be challenging at best and potentially disastrous if you do not remain vigilant.

On reflection, the implications of this new economy for clients and providers of legal services are three-fold:

1. *The Butterfly Effect and the Fast Lane*. First coined by Edward Norton Lorenz, the Butterfly Effect describes the theoretical causal connection for how a small butterfly flapping its wings in a jungle in South America can cause a disturbance in a large weather system thousands of miles away.¹⁶ Elements of the new economy have much the same effect. For example, an improper government sales-related facilitation payment made through a third party by a small entity Synopsys may acquire in southern China two years before we even knew the company existed could have significant Foreign Corrupt Practices Act and revenue recognition implications for a multi-billion-dollar company doing business in the United States. The implications for how the legal services we provide to this increasingly networked

¹⁴ See Michael Chui, Markus Loffler & Roger Roberts, *The Internet of Things*, MCKINSEY QUARTERLY (Mar. 2010), http://www.mckinseyquarterly.com/The_Internet_of_Things_2538.

¹⁵ See, e.g., Press Release, Marketwatch, NYU Stern Professors Available for Comment on Overhaul of EU Privacy Rules; "Examine intent, don't require consent," they argue (Jan. 24, 2012), available at <http://www.marketwatch.com/story/nyu-stern-professors-available-for-comment-on-overhaul-of-eu-privacy-rules-examine-intent-dont-require-consent-they-argue-2012-01-24> (regarding EU regulation of privacy concerns).

¹⁶ THE CHAOS AVANTE-GARDE: MEMORIES OF THE EARLY DAYS OF CHAOS THEORY 91 (Ralph H. Abraham & Yoshisuke Ueda eds., 2000).

and interdependent world are at times rather staggering in their breadth and depth. The complexity of the relevant global regulatory and legal framework requires a level of communication and coordination that I do not believe have been seen up to today. And evaluating the magnitude and likelihood of the risk becomes increasingly important when the implications can be criminal sanctions and individual jail time. Add to this the reality that we are often operating, as I have heard described, as if we were traveling in the fast lane at the speed limit (or above, depending on who is telling the story) and trying to change the right rear tire at the same time. Because the speed of information acquisition, transmission, and dissemination has increased, the speed of business has increased. Because the speed of business has increased, the speed of interactions with that business must increase to keep pace. It used to be said that outside counsel needed to be a “mile deep” in their knowledge and that general counsel needed to be a “mile wide” in theirs. In the new economy, neither appear to be the case. Tom Cole, Chairman of Sidley Austin LLP, recently described a compliance project we were discussing as needing to be both a “mile wide and a mile deep.” I could not have agreed more. For outside counsel, it is not enough to know the client’s business and to know the law. He or she must think globally and be able to spot practical, relevant, and forward-looking issues and to propose solutions under more than just a particular area of the U.S. law. He or she must also clearly articulate potentially wide-ranging implications and solutions in almost innumerable foreign jurisdictions. I will address this point in the next section of the article.

2. *The “DNA Gap”: Knowing the Client’s Business and Innovating It.* Professor Hadfield explains that often lawyers do not have a good understanding of what their clients do and that this is impeding their ability to effectively and efficiently create innovative solutions to problems. I specifically point this out because I think that now more than ever this is an important issue on at least three fronts.

First, legal services providers, both in-house and outside counsel, need to have a much better understanding of their clients’ businesses. This requires more than just reading the 10-K and proxy statements and taking a look at the business’s website to get the marketing pitch. This is making sure that the legal services providers are attending, for example, the company’s product, revenue recognition, finance or other trainings to ensure that they have a good understanding of the product space as well as the business models at work. Counsel should be involved in understanding the policies and key processes of the company and in helping to develop best practices. If counsel are not aware of the key priorities or the management by objectives (MBOs) of the company or the legal department for the upcoming year, they are

invariably likely to be out of touch with what projects and programs the company is working towards. Outside counsel should be looking for opportunities to continue to develop numerous relationships within the company and the legal department and not simply with the general counsel. Awareness of headcount vacancies and budget targets for the upcoming year are important data points to understand. Meetings, breakfasts, and brown bag training programs with the general counsel and his or her staff should be a given to ensure ongoing dialogue about the business.

Second, I think having a better understanding of the business must include understanding the non-legal aspects of the business in a more multidisciplinary way. Too often I am presented with an approach that answers the legal question but that does not address the business problem. There is a real opportunity, given the complexities of the new economy, for legal services providers to provide solutions that address issues on a number of fronts. Rather than solving for the legal answer, consider solving for the complete data set. That is, are there optics implications for the suggested solution? Are there risk management implications for the approach that may call for providing certain materials to the audit committee with respect to the magnitude and likelihood of the risk? Will there be budget implications for the proposed solution that should be fleshed out? Will this solution likely need to be presented or "sold" to other executives or business units within the company, such that it should be formatted as a presentation instead of a memo? Should we be providing advice on this issue from a business and litigation perspective to ensure completeness? Many of the issues we face have multiple angles or perspectives to consider and have varying implications depending on where one sits in the organization. And while these certainly applied in the "old economy," the complexity, speed, and interconnectedness of the new economy make these even more crucial considerations. For example, in the old economy, as business endeavors unfolded on a pace more in keeping with the speed of technology available in that era, there was more time to speak with specialists in each field regarding specific business, legal and marketing concerns. Outside lawyers could address the legal issue in a memo which would then be read by in-house counsel who would liaise with the business executives who had been speaking with business consultants to make the final business decision. In the new economy, the speed with which transactions progress necessitates the breakdown of this process separation. Lawyers must have an increased knowledge of their clients' businesses and goals in order to fulfill the needs of their clients in the new economy.

Finally, Professor Hadfield mentions the impediments to both creativity and innovation in the practice of law, as she sees it. I could not agree more; these skills are not being developed even at the law school level. Nor do I believe that the legal profession does a great job in the evaluation and recruitment of law students in terms of their creativity and innovation. Law school curricula have changed little since I graduated over two decades ago and still do not appear to emphasize these important traits. However, in today's new economy, it may be more essential than ever to look forward to find new opportunities and new ways of doing things. We need to do a better job of encouraging, developing, and rewarding innovative approaches and increased creativity in the way that we deliver legal services, starting from the ground up.

3. *Faster, Better, Cheaper.* Finally, consider incorporating a little bit of how your clients think into your approach. In the new economy, being faster and better is not just an aspirational goal. It is a business necessity when dealing with increasingly complex, multi-faceted, changing, and novel business and legal issues that fast-moving, hi-tech clients face in this competitive and global economy. Outside and in-house counsel must be able to anticipate issues and be willing to take calculated risks in proposing solutions.

Reducing legal costs and developing more relevant fee arrangements have garnered a lot of press recently. They are certainly key concerns for general counsel in any industry. As Professor Hadfield points out, there are few out there who are not focused on reducing overall legal budgets as a percentage of the company's expenditures in order to attain greater orders of efficiency. In fact, few business units within hi-tech organizations are not expected to do more with less, each and every year. What appears lost in the discussion oftentimes is what factors are driving the call for better cost controls and more innovative fee arrangements. When alternative billing arrangements started to catch on a few years ago, outside counsel tended to be reactive, and each proposal tended to be a one-off deal. Each project is surely distinct, but is it not feasible for major law firms to develop different standard pricing models based on firm-wide experience for future customization, similar to what consulting firms have been doing? It seems that too few law firms have been proactive in proposing win-win pricing models. And, I would argue, too few in-house counsel are holding their outside firms to account for developing these new and necessary models. What Professor Hadfield has discovered in her interviews and research is the kernel that makes up much of what the in-house counsel are really describing when asked about their perspective on the state of the attorney-client financial relationship.

I have saved this faster, better, cheaper perspective for last in the hope that rather than it being misconstrued, it may become an interesting way for legal services providers to begin to think about the solutions they provide. Let me start first with what I do not mean. There may be some out there who pride themselves on providing “value added services,” who view these three words as amounting to the commoditization of all legal services and the potential ruination of the professional side of the business. That is not my intent. Nor is my intent to suggest that the focus on these three words is a substitute for what I consider the best practice of developing a long-term partnership approach to legal services or an intent to turn such an approach into a transaction-based exercise. This perspective is more additive. My intent is two-fold. First, consider these suggestions using the perspective of your customer’s customer—the consumer—but affecting many in the supply chain who are part of this new economy. For example, most of us in the market for a new mobile device want to make sure that it has more memory and multi-processor capability in order to run more applications with faster connectivity and reduced wait-time. We want it to have better pixilation on the camera and improved mixed signal capacity. We’d like it to have better connectivity and improved ease of use. Oh, and we’d like to pay half the price for it. That is the world that we live in as part of the new economy. So when you are thinking about how we view the world in the legal services context, consider that this framework is the world we live in. We are asked to provide more improved features with faster response time at a lower cost. If you are at least starting from that frame of mind, you understand how our valued customers think and you will better understand the product we need to deliver in order to stay competitive. Second, if you can begin to think about how your offerings can be developed to support this reality, then you are really understanding this new economy. This may not mean that everything you do has to be done with this as the only valid perspective, but if you can partner with me to come up with ways to address this in different areas of our practice, you will earn stickiness with my business that is hard to want to replace.

V. CONCLUSION

Professor Hadfield gets it right when she describes the new economy’s impacts. From the hi-tech perspective, the new economy’s mobile, cloud and smart characteristics require a new, or at least renewed, approach to how we develop and deliver legal solutions in service to the ecosystem. Considering innovative ways to support the

new economy company through an understanding of some of the forces that exert themselves in today's world, bringing better knowledge and a broader perspective of the business, and considering ways to collaborate on projects while adopting a better, faster, cheaper perspective will go a long way towards addressing some of the pressing issues faced by new economy participants.

